BAIL SLIP

I. That the Appellants in Crl.A.No.893/2000 namely 1) Prabhakaran 2) Maheswaran @ Mahesh 3) Narayanan 4) Kumaran 5) Gurunathan 6) Manikandan [Accused 1,2,6 to 9 in S.C.No.126/2000 on the file of the II Addl. Sessions Judge, Coimbatore) were directed to be released on bail as per order of this court dt. 29.8.2001 made in Crl.M.P.Nos.2853 & 5308/2001.

II. That the Appellants in Crl.A.No.1093/2000 namely 1) Vivekananthan @ Vivek 2) Umashankar 3) Srinivasan 4) Manickam [Accused 3,5,10 and 11 in S.C.No.126/2000 on the file of the II Addl. Sessions Judge, Coimbatore], were directed to be released on bail as per order of this Court dt. 29.8.2001 made in Crl.M.P.No.2853 and 5308/2001.

III. The Appellant in Crl.A.No.1092/2000 namely Nagaraj [Accused 14 in S.C.No.181/2000 dt. 18.8.2000 on the file of the II Addl. Sessions Judge, Coimbatore was directed to be released on bail as per order of this Court dated 4.9.2002 made in Crl.M.P.No.8212/2002.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2006

CORAM

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM
and
THE HONOURABLE MR. JUSTICE AR. RAMALINGAM

Criminal Appeal Nos.893, 1092 and 1093 of 2000

1. Prabhakaran
2. Maheswaran alias Mahesh
3. Narayanan
4. Kumaran
5. Gurunathan
6. Manikandan .. Appellants in C.A.Nos.893 of 2000

Nagaraj ..Appellant in C.A.Nos.1092 of 2000

1. Vivekananthan @ Vivek
2. Umashankar
3. Srinivasan
4. Manickam .. Appellants in C.A.Nos.1093 of 2000/Accused.

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Vs.

State: rep. by
The Inspector of Police,
B-4 Race Course Police Station
Coimbatore
Crime Nos.1891, 1892, 1893 and 1898 of 97 ..Respondent in all
thereafter three appeals

Criminal Appeals filed against the judgment dated 18.8.2000 made in S.C.Nos. 126 of 2000 and 181 of 2000 on the file of the II Additional Sessions Judge, Coimbatore.

For Appellants : Mr. V. Ayyathurai for
Mr. Su. Srinivasan

For Respondent : Mr. S.Jayakumar,
Public Prosecutor for
Mr.E.Raja, Addl.P.P.

C O M M O N J U D G M E N T

M. KARPAGAVINAYAGAM, J.

On 29.11.1997, one Selvaraj, a Police Constable, who was on bundobust duty, was murdered by some Muslim fundamentalists in Coimbatore. As a consequence of this murder, there was an utter chaos and confusion prevailed in the City. The accused/Hindus thought that the entire Muslim community was responsible for the murder of the said Selvaraj and as an act of revenge, the accused had the common object of committing murder of Muslim public. Accordingly, on 30.11.1997, A1 to A11 along with A14 at the instigation of A12 and A13 murdered four Muslims, viz., Harris, Habib Rahman, Hariff and Liyagath Ali at C.M.C. Hospital, Coimbatore. On this accusation, A1 to A14 were tried for the offences under Sections 148, 302, 149 read with 302 I.P.C. Ultimately, A4, A12 and A13 were acquitted. The other accused were convicted. Those accused have filed these appeals.

2. The relevant facts for the disposal of these appeals are as follows:

(a) On 29.11.1997 at about 9.00 p.m., one Selvaraj, a Police Constable was murdered by some Muslim fundamentalists. As a consequence of the said murder, 18 Muslims were murdered in a police firing and some of the persons sustained injuries. In the meantime, the body of Selvaraj, Police Constable was brought and kept in the mortuary of Government Hospital, Coimbatore. The accused persons, who are Hindus, assembled at 10.00 a.m. on 30.11.1997 in the Hospital and raised slogans against the Muslim community.

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(b) On the date of occurrence, i.e. on 30.11.1997 at about 12.00 noon, on noticing the tense situation in the City, P.W.1 Ayub Khan, who is a Plumber by profession, went to Ukkadam in search of his brother Hariff, the third deceased. Since he was caught in the police firing, he sustained bullet injury on his right side ear. P.W.1 sat on the spot itself with injury on his ear. At that point of time, Hariff, his brother, the third deceased came to the spot in a Scooter and found that his brother PW1 sitting on the floor with injury on his ear. Then, the third deceased took him in the Scooter to Aslam Hospital to give treatment. There, he found that PW2 Sadique, PW8 Syed Mohammed, PW15 Hameed and PW16 Rafique along with Abdul Rahman and Nazir were with injuries sustained in the firing incident standing in front of the hospital awaiting the arrival of the Doctor.

(c) All of them waited for some time. Since the Doctor did not turn up, all of them decided to go to the Government Hospital, Coimbatore. Accordingly, they engaged a tourist van driven by PW3 Mohamed Ali. All the injured persons along with other witnesses boarded the van and asked P.W.3 to proceed to the Government Hospital, Coimbatore. When the van reached the Government Hospital, Coimbatore, P.W1 Ayub Khan quickly got down from the van and ran to the Emergency Ward and informed the staff of the hospital about the condition of the injured persons, who received bullet injuries, sitting in the van and requested the staff to bring stretchers to take them to the hospital. Accordingly, the hospital staff brought two stretchers near to the van for taking the injured persons. One Abdul Rahman, who sustained injuries, was kept laid down in one stretcher. In the very same stretcher, Habib Rahman, the second deceased was seated. In another stretcher, Nazir, the other injured was kept laid down and in the very same stretcher, Harris, the first deceased was sitting.

(d) At that point of time, the accused persons being Hindus got enraged over the death of Selvaraj, Constable, and assembled in the hospital. On noticing that Muslim persons with injuries being taken from the van inside the hospital for giving treatment, they came rushing towards those injured persons and began to attack them. P.W.1 on seeing the attack feared that the accused might attack him also and ran towards the Emergency Ward and hid himself there for nearly half-an-hour and witnessed the entire occurrence taking place outside. While the attack was going on, P.W.3 van driver departed from the scene of occurrence with his van.

(e) The accused persons pushed down the first deceased Harris and the second deceased Habib Rahman from the stretcher. A1 Prabhakaran stabbed the first deceased on his neck with knife. A14 Nagaraj beat the first deceased with wooden log on his stomach. A2 Maheswaran @ Mahesh and A3 Vivekananthan @ Vivek kicked the first deceased . The first deceased died on the spot. On seeing the second deceased falling down near a tree from the stretcher, A1 Prabhakaran, A5 Umashankar, A8 Gurunathan and A9

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Manikandan collected petrol in a coconut dry shell from a motor bike and poured the same on the second deceased Habib Rahman. A2 Maheswaran took the match box and lit the fire and threw it on the second deceased. A10 Srinivasan beat on the head of the second deceased with the wooden log. At that time, the fourth deceased Liyagath Ali was coming near the milk booth. A3, A7, A10, A11 and A14 attacked Liyagath Ali, the fourth deceased with wooden logs. At the same time, the third deceased Hariff, who came to the hospital, was also attacked by A2, A3, A5, A6, A7 and A10 and A14 with wooden logs. All the deceased died on the spot.

(f) On seeing the attack made on the first deceased Harris, one Palanisamy gave a complaint (Ex.P40) to PW26, Police Constable. He received the same on 30.11.1997 at about 1.30 p.m. and registered a case in Crime No.1891/97 for the offence under Section 302 IPC.

(g) On seeing the attack on the second deceased Habib Rahman, PW5, a Police Constable, who was on duty in the Hospital, gave a complaint (Ex.P42) to P.W.26 at about 1.40 p.m. He registered the case in Crime No.1892/97 for the offence under Section 302 IPC.

(h) On seeing the attack on the third deceased Hariff, one David gave a complaint (Ex.P43) at about 1.50 p.m. to PW26 Constable. He registered the case in Crime No.1893/97 for the offence under Section 302 IPC.

(i) Similarly, for the attack made on the fourth deceased Liyagath Ali, PW4 Mahendran gave a complaint (Ex.P1) at about 4.15 p.m. to PW26 Constable, who in turn, registered the case in Crime No.1898/97 for the offences under Sections 147, 148 and 302 IPC.

(j) P.W.26 immediately collected all the FIRs. and sent the printed copies to the Judicial Magistrate and to his superior officers. PW34, the Inspector of Police took up further investigation and arrived at the scene of occurrence. He observed other formalities like preparation of observation mahazar and rough sketch. He conducted inquest over the dead bodies. Thereupon, he sent the dead bodies for post-mortem.

(k) PW17 Doctor conducted post-mortem on 1.12.1997 on the bodies of Harris, first deceased and Habib Rahman, second deceased. P.W.11, another Doctor conducted post-mortem on the bodies of Hariff, third deceased and Liyagath Ali, fourth deceased. The post-mortem certificates in respect of D1 to D4 are Exs.P14, P.16, P.12 and P10 are respectively.

(l) Since the deceased were not identified by the respective relatives, all the bodies were handed over to P.W.25, the District Secretary of Tamil Nadu Muslim Munnetra Kazhagam.

(m) On 21.12.1997, PW34, the Inspector of Police arrested A1 and A4 and recovered MO1 knife on the confession of A1. On 6.1.1998, A5 and A6 were arrested and sent to judicial custody.

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(n) On 21.7.1998, PW.36, the Inspector of Police, CBCID took up further investigation. On 29.8.1998, he arrested A3 and recovered MO6 knife. On 4.9.1998, he arrested A14. On 15.9.1998, he arrested A10. On 21.11.1998, he arrested A12 and A13. On 9.11.1998, he sent a requisition (Ex.P4) to the Chief Judicial Magistrate, Coimbatore, to conduct test identification parade on A3, A10 and A14.

(o) On 17.11.1998, P.W.10 Judicial Magistrate, Coimbatore conducted the test identification parade. P.W.1 identified all the three accused. PW2 identified only A10 and not others.

(p) Another identification parade was conducted on 18.11.1998 in respect of A2, A7, A8 and A9. PW1 identified A2, A8 and A9 alone. He failed to identify A7.

(q) After completion of the investigation, P.W.36 filed the charge sheet against all the accused for the offences under Sections 148, 149, 302 read with 109 I.P.C.

(r) During the course of trial, the prosecution examined 36 witnesses, filed 62 exhibits and marked 16 material objects.

(s) When the accused were questioned under Section 313 Cr.P.C., they denied their complicity in the crime in question. On the side of defence, one document Ex.D1 was marked.

(t) The trial court, after analysing the evidence available on record, convicted A1, A2, A3, A5 to A10 and A11 in respect of murders, i.e. D1 to D4 and acquitted other accused, viz. A4, 12 and A13 in respect of all the charges.

(u) There is no appeal as against the acquittal. Aggrieved by the conviction, the accused 1, 2, 3, 5 to 10 and 11 have filed these appeals in C.A.Nos.893,1092 ands 1093 of 2000.

3. Mr.V.Ayyathurai, the learned counsel for the appellants would take us through the entire evidence and point out various infirmities in the prosecution case and submit that the prosecution has miserably failed to prove the case beyond reasonable doubt and as such, all the appellants are liable to be acquitted. He would cite the following authorities:

(i) 1993 CRI.L.J.2598 (SC) (GOVIND NARAIN v. STATE OF RAJASTHAN) ;

(ii)1994 (5) SUPREME COURT CASES 188 (MEHARAJ SINGH v. STATE OF U.P.) ;

(iii) 1994 CRI.L.J.952 (SC) (STATE OF KARNATAKA v. MALLU KALLAPPA PATIL) ;

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(iv) 1995 CRI.L.J.2921 (SC) (MANGAMMA AVVA v. STATE OF A.P.) ;

(v) 1995 CRI.L.J. 3988 (MEGHA SINGH v. STATE OF HARYANA) ;

(vi)1997 (1) L.W.(CRI.) 24 (2) (M.J.KUMAR v. SAHADEVAN AND 3 OTHERS) ;

(vii) 2002 (2) SUPREME COURT CASES 737 (DEEPAK KUMAR v. RAVI VIRMANI) ;

(viii) 2003 CRI.L.J.894 (SC) (STATE OF U.P. v. ARUN KUMAR GUPTA) ;

(ix) 2003 CRI.L.J.1717 (SURESH CHAUDHARY v. STATE OF BIHAR) ;

(x) 2003 CRI.L.J.2337 (SC) (STATE OF U.P. v. BHAGWANT) ;

(xi) 2003 (9) SUPREME COURT CASES 41 (JAI PAL v. STATE OF U.P.) ;

(xii) 2003 (10) SUPREME COURT CASES 670 (MARUTI RAMA NAIK v. STATE OF MAHARASHTRA) ;

(xiii) 2003 (11) SUPREME COURT CASES 203 (STATE OF PUNJAB v. HARBANS SINGH) ;

(xiv) 2004 (10) SUPREME COURT CASES 583 (VIJAYABHAI BHANABHAI PATEL v. NAVNITBHAI NATHUBHAI PATEL) ; and

(xv) 2004 (11) SUPREME COURT CASES 253 (HARJINDER SINGH v. STATE OF PUNJAB);

4. On these aspects, we have heard Mr.S.Jayakumar, the learned Public Prosecutor. He would cite the following decisions:

(i) 1973 CRI.L.J.1120 (V 79 C 349) = AIR 1973 S. C.1409 (RANBIR v. STATE OF PUNJAB) ;

(ii)AIR 1974 SUPREME COURT 1901 (ATMADUDDIN v. STATE OF U.P.) ;

(iii)1986 CRI.L.J.1083 = AIR 1986 SUPREME COURT 990 (LALLI v. STATE OF WEST BENGAL) ;

(iv) 1988 (3) SUPREME COURT CASES 609 (KEHAR SINGH v. STATE (DELHI ADMINISTRATION) ;

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(v)1995 SUPREME COURT CASES (CRI) 797 (RADHA BALLABH v. STATE OF U.P.) ;

(vi)1995 CRI.L.J.3613 (SC) (PATHAN FATHIMA v. STATE OF A.P.) ;

(vii)AIR 1998 SUPREME COURT 40 (DUKHMOCHAN PANDEY v. STATE OF BIHAR) ;

(viii)1999 AIR SCW 3756 (LEELA RAM v. STATE OF HARYANA) ;

(ix)1999 CRI.L.J.4603 (SC) (RAMESH LAXMAN GAVLI v. STATE OF MADHYA PRADESH) ;

(x)2000 CRI.L.J.808 (SC) (RAM SWAROOP v. STATE OF U.P.) ;

(xi) 2001 M.L.J.(CRI) 34 (STATE OF WEST BENGAL v. MIR MOHAMMED OMAR) ;

(xii) 2001 SUPREME COURT CASES (CRI) 1416 (SUKHDEV YADAV v. STATE OF BIHAR) ;

(xiii) 2002 (1) SUPREME COURT CASES 731 (GANESH LAL v. STATE OF RAJASTHAN) ;

(xiv) 2002 (5) SUPREME COURT CASES 234 (DEVENDER PAL SINGH v. STATE OF NCT OF DELHI) ;

(xv) 2003 SUPREME COURT CASES (CRI.) 201 (BODHRAJ v. STATE OF JAMMU AND KASHMIR) ;

(xvi) 2004 SUPREME COURT CASES (CRI.) 135 (STATE OF PUNJAB v. KARNAIL SINGH) ;

(xvii) 2004 SUPREME COURT CASES (CRI.) 999 (ZAHIRA HABIBULLA H. SHEIKH v. STATE OF GUJARAT) ;

(xviii) AIR 2004 SUPREME COURT 261 (BANTI v. STATE OF MADHYA PRADESH) ;

(xix) 2004 (11) SUPREME COURT CASES 585 (ESHER SINGH v. STATE OF A.P.) ;

(xx) 2005 AIR SCW 905 (STATE OF U.P. v. SATISH) ; and

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5. Both were permitted to file their written submissions.

6. We have given our meticulous consideration to the rival contentions urged by both the counsel, considered their written submissions and also gone through the entire records.

7. There were four murders. The first murder would relate to the death of the first deceased Harris. According to the prosecution, P.Ws.1,2,8,15 and 16, the injured persons, who sustained injuries due to the police firing, came in a van to Government Hospital. P.W.1 as soon as the van reached the hospital got down and went inside the Emergency Ward and informed the staff about the condition of the injured persons having bullet injuries. Then, the hospital staff brought two stretchers near to the van for taking the injured persons inside the Emergency Ward. One Abdul Rahman was kept laid down in one stretcher and Habib Rahman, the second deceased was sitting in that stretcher. One Nazir was kept laid down in another stretcher and in the said stretcher, Harris, the first deceased was sitting. On seeing that these injured persons, the Muslims, were being taken in the stretchers for giving treatment, A2,A3,A5,A6,A7,A8,A9,A10 and A14 attacked them. P.W.1 went inside the Emergency Ward and witnessed the occurrence. P.W.3 Van Driver left the scene with his van. A1 stabbed the first deceased Harris with knife on his neck. A14 beat the first deceased with wooden log on his stomach. A2 and A3 kicked the first deceased. The first deceased died on the spot.

8. The witnesses who speak about the occurrence in which the first deceased was done to death are P.W.1, P.W.2 and P.W.18. The overt acts in respect of the death of the first deceased are attributed to A1,A2,A3 and A14. In respect of this occurrence which was held at 1.00 p.m. on 30.11.1997, one Palanisamy has given a complaint (Ex.P40) to P.W.26 Police Constable, who in turn, registered the case in Crime No.1891/97 for the offence under Section 302 I.P.C. This Palanisamy has not been examined. According to P.Ws.1,2 and 8, the first deceased Harris and one Abdul Rahman sat in a stretcher and they were pulled down by the accused from the said stretcher.

9. In respect of the murder of the second deceased Habib Rahman, the witnesses who speak about the manner of the occurrence are P.W.1, P.W.2,P.W.5,P.W.8,P.W.15 and P.W.16. According to them, the second deceased was pulled down from the stretcher by the accused. The accused 2,3,6,8,9 and 10 collected petrol from the motor-bike and poured the same on the deceased and set fire and also beat him. With reference to this occurrence held at 1.15 p.m., P.W.5, a Police Constable attached to the Out Post Police Station in the hospital has given a complaint (Ex.P42) through a special report. P.W.26 Constable received the same and registered the case for the offence under Section 302 I.P.C. in Crime

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No.1892/97.

10. In respect of the murder of the third deceased Hariff, P.W.15 and P.W.16 would speak about the attack made on the third deceased with wooden logs by A2,A3,A5,A10 and A14 at 1.30 p.m. in the hospital. In respect of this occurrence, one David has given a complaint (Ex.P43) which has been registered by P.W.26 Constable in Crime No.1893/97. The said David, the first informant has not been examined.

11. In regard to the murder of Liyagath Ali, the fourth deceased, which took place at 1.15 p.m. inside the main gate of the hospital, P.W.2,P.W.4 and P.W.8 attacked the fourth deceased near the milk booth with wooden logs and caused his death. With reference to this occurrence, P.W.4 Mahendran gave the complaint Ex.P45 to P.W.34, the Inspector of Police This was registered in Crime No.1898/97.

12. Let us now deal with the appreciation of the evidence of each witness.

13. P.W.1 Ayub Khan, the brother of the third deceased Hariff, would speak about the murder of Harris, the first deceased and Habib Rahman, the second deceased. According to him, he along with the other injured persons who sustained injuries due to police firing went in a van to the Government Hospital, Coimbatore. When the stretchers were brought from the hospital and the deceased 1 and 2 were taken in the stretchers along with one Abdul Rahman and Nazir, the accused attacked deceased 1 and 2.

14. P.W.1 is one of the main witnesses in this case. He is the brother of the third deceased. According to him, on noticing that the deceased 1 and 2 were attacked, he ran into the Emergency Ward and hid himself and witnessed the occurrence from the Ward. In respect of the two deaths (death of D1 and D2), P.W.1 who saw the occurrence has not chosen to give any complaint. One Palanisamy gave the complaint Ex.P40 to P.W.26 Police Constable. The said Palanisamy was not examined. In respect of the death of Habib Rahman, the second deceased, P.W.5 Police Constable attached to the Out Post Police Station has given the complaint Ex.P42 which was registered in Crime No.1892/97.

15. It is the case of prosecution that in retaliation to the murder of one Selvaraj, Police Constable, there was a police firing in which 18 Muslims died and some of them sustained injuries. P.W.1, D1 and D2 also sustained injuries. Therefore, they came to hospital along with the injured persons to take treatment. P.W.1 is the Secretary of Kovai Tamilnadu Muslim Munnetra Kazhagam. The occurrences took place in the day light of 30.11.1997 from 1.00 p.m.onwards. According to him, he saw the two occurrences in which two persons died. He would admit that he neither gave any complaint to the police in respect of the occurrences in which two deceased were done to death in his presence nor informed anybody else about the same. Even according to the prosecution, the dead bodies of

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four Muslims were handed over to the Muslim Association and the bodies were taken together for burial in a procession in which P.W.1 also participated.

16. The peculiar feature is that even though P.W.1 came in a van along with the injured accompanied by the third deceased Hariff, his brother, to the hospital, he did not care to verify as to what happened to the third deceased who was done to death in the hospital premises itself. He admits in the cross-examination that even though he was the eye witness, he had never attempted to inform any persons including the police officers either in person or through telephone about the occurrence that took place on 30.11.1997.

17. As a matter of fact, in respect of the death of the third deceased Hariff, his brother, he received a sum of Rs.2 lakhs which was sanctioned after the police enquiry. In the said police enquiry, he did not whisper anything that he was an eye witness to the murder of the deceased 1 and 2. No evidence was produced by the prosecution that he also sustained injuries due to police firing and therefore, he came to the hospital and took treatment.

18. P.W.1 has specifically stated that on his request, he was allowed to go inside the Emergency Ward and the doctors locked the room from inside for his safety and accordingly, P.W.1 had hid himself inside the Ward and saw the occurrence. However, no doctors were examined to speak about this fact.

19. After the Coimbatore Bomb Blast that took place on 14.2.1998, he was detained under the preventive detention. Before that, Justice Gokulakrishnan Commission was constituted to conduct an enquiry with reference to the murders. Even before the Commission, P.W.1 did not care to appear and give any statement about the murder of the deceased 1 and 2.

20. The occurrence had taken place on 30.11.1997. P.W.1 was examined only on 4.11.1998, nearly after a year. The identification parade was conducted on 17.11.1998 and 18.11.1998. P.W.1 identified A3,A10 and A14 in the parade conducted on 17.11.1998. He identified A2,A8 and A9 in the parade on 18.11.1998. A3 was arrested as early as on 29.8.1998 itself. Similarly, A14 was arrested on 4.9.1998 and A10 was arrested on 15.9.1998. A2, A8 and A9 were also secured through P.T. Warrants long before the parade.

21. The initial investigation was conducted by P.W.34, the Inspector of Police. Then, the investigation was taken up by P.W.36, the Inspector of Police, CB CID on 21.7.1998. As such, the first investigating officer has not chosen to examine P.W.1 earlier nor P.W.1 informed about the incident to the first investigating officer P.W.34. As indicated above, P.W.1 was examined only on 4.11.1998 by P.W.36. There is no reason as to

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why P.W.1 kept mum all along without disclosing the occurrence to any person and as to why the police did not obtain any statement from him with reference to the said occurrence. There is also no material to show as to how the police found out that he was one of the eye witnesses. So, his presence at the time of occurrence in the hospital is quite doubtful.

22. P.W.1 would also speak about the death of the second deceased, another Muslim, who was burnt to death. In respect of this occurrence also, P.W.1 did not whisper anything to any of the police officers who were on bundobust duty in the hospital. As indicated above, in respect of the death of the second deceased, a complaint (Ex.P42) has been given by P.W.5, a Police Constable attached to the Out Post Police Station and the same was registered by P.W.26 Police Constable in Crime No.1892/97. According to P.W.5, when he was in the Out Post Station, he was informed that some persons set fire to the second deceased and burnt him. Immediately, he came out and saw the deceased with burn injuries. He tried with the help of others gathered there to take him to the hospital to save him, but he died there itself.

23. In the complaint Ex.P42 given by P.W.5, he did not mention about the attack made on the first deceased or about the accused found near the deceased causing burn injuries. P.W.5 did not speak about the presence of any other eye witnesses including P.W.1. He did not choose to mention any names of the accused nor the witnesses in Ex.P42. On the other hand, P.W.5 stated that at the time of occurrence, a lot of Police Officers and Constables were on bundobust duty since the body of Selvaraj, Police Constable who was done to death by some Muslim fundamentalists, was brought to the hospital and kept in the mortuary. According to him, approximately, more than 100 Police Constables were there in uniform. When such being the case, it is quite strange to state that all these occurrences took place in the presence of public who have gathered there and 100 Police Constables who were on bundobust duty.

24. Furthermore, P.W.5 would state that prior to this occurrence, one C.P.Dhandapani, M.L.A. came to the hospital to pay homage to Selvaraj. The public who have gathered there attempted to attack him. With reference to this occurrence, a case was registered. Only thereafter, the occurrences in which Muslims were attacked took place. The evidence of P.W.5 would make it clear that these occurrences took place in furtherance of the earlier incident in which there was an attempt to attack M.L.A. Even though the investigation has been conducted in all the cases, the investigating agency has not placed any records before the Court with reference to the first occurrence which is genesis. In consequence of this, the other incidents took place.

25. P.W.2 Sadique is another eye witness. He also speaks about the death of the deceased 1 and 2. According to him, he accompanied the other injured persons in the van to the hospital. He admits that he is a member of the Tamilnadu Muslim Munnetra Kazhagam. He would state that he

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saw that Harris, the first deceased was being beaten up and Habib Rahman, the second deceased was being set on fire by pouring petrol. He would also state that one other man who entered into the main gate of the hospital was beaten up by some of the accused, with the result, he fell down and died. However, he did not give any details of the identity of the said deceased who is the third deceased. He admitted in the cross-examination that he immediately, after the occurrence was over, he left the place and went home.

26. It is quite strange to see that P.W.2 having accompanied the injured persons to the hospital in the van, in order to enable them to get treatment in the Government Hospital and having been a member of a Muslim Association and having seen the brutal murder of three persons, had been keeping quiet without informing any person or police about the occurrence and about the involvement of the accused for several months. He knew very well that a case has already been registered in respect of the death of the deceased persons.

27. He admitted in the cross-examination that immediately after the occurrence, within two weeks, the police group took him to Kerala for investigation of this case. He also admitted that subsequent to the Coimbatore Bomb Blast which took place 16.2.1998, within two weeks thereafter, he was examined by CB CID police at B1 Police Station. Again, he was examined by one Balasubramaniam, CB CID police on 23.2.1998. He never whispered anything about the details of the occurrence which took place on 30.11.1997 inside the hospital either to the police officers or to the Muslim Association. The investigation was initially conducted by P.W.34. He did not examine P.W.2. On the other hand, he was examined by P.W.36, the Inspector of Police, CB CID only on 4.11.1998, nearly after a year.

28. Similarly, it is quite artificial to see that P.W.2, another Muslim, who got down from the van was spared by the accused who attacked the other injured deceased. He deposed that one Abdul Rahman was being carried in a stretcher and in that stretcher, the first deceased Harris was sitting and one Nazir was taken in another stretcher in which the second deceased Habib Rahman was sitting. On the other hand, P.W.1 would state that the second deceased was sitting in the stretcher along with Abdul Rahman and the first deceased was sitting along with Nazir in another stretcher. The very fact that he was examined by p.W.36 after one year and also the inconsistency between P.W.1 and P.W.2 would make it clear that P.W.2 would not have been present in the place of occurrence. Further, P.W.2 did not identify A3 and A14 in the parade. He was able to identify A10 alone in the parade which was conducted belatedly.

29. P.W.3 Mohamed Ali is another eye witness who speaks about the death of the deceased 1 and 2 who were attacked by the accused. According to P.W.3, two persons who sustained bullet injuries were not carried in two stretchers and all the accused attacked both the injured persons and

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caused their death. This is not the prosecution case. The case of the prosecution is that the first deceased Harris who accompanied Nazir who kept laid down in a stretcher and Habib Rahman, the second deceased who accompanied Abdul Rahman in another stretcher were pulled down from the stretchers and the first deceased was attacked with knife and wooden log by some accused and the second deceased was set on fire by the other accused.

30. The deposition of P.W.3 is completely contradictory to the prosecution case. Further, he did not identify any of the accused in the Court. During the course of the occurrence, he got into the van and took it away from the hospital. Even though he being a Muslim, the van driver, who dropped the other Muslim injured in the hospital, saw the brutal occurrence in which two Muslim persons died, he had not chosen to give information to the police. According to him, he started the van and stopped it at the second gate of the hospital premises itself and went away. P.W.34, the first investigating officer did not find the said van in the spot.

31. According to the prosecution, some of the injured witnesses came to the hospital in a van driven by P.W.3. According to him, he is the eye witness for the death of the deceased 1 and 2. Even though the second deceased is said to have burnt to death, P.W.3 did not say anything about the same. He bluntly said that he saw the occurrence in which the deceased 1 and 2 were done to death. When he was confronted with the question that he is not the van driver and there is no connection between the owner of the van and himself, he admitted in the cross-examination that he did not know his owner's name etc. According to P.W.3, he was the driver of the Standard van. But, P.W.15, another eye witness, would state that it is not the Standard van and it is the Metador van. P.W.3 would admit that there was police bundobust and about 20 Constables were standing there. If that is so, there is no reason as to why P.W.3 did not venture to inform any of the police officers or to take steps to save the victims by approaching the police who were standing there.

32. At any rate, it is quite doubtful that such an incident had taken place inside the hospital when there was a heavy police bundobust provided in the hospital after the firing incident in which 18 Muslims died. All these things would make it clear that the presence of P.W.3 in the place of occurrence who was examined on 4.8.1998, nearly after 9 months, by P.W.36, even though the occurrence took place on 30.11.1997, is doubtful.

33. P.W.4 Mahendran is another eye witness. He is the author of Ex.P45 complaint registered in Crime No.1898/97, which relate to the death of Liyagath Ali, the fourth deceased, who was done to death by the accused persons near the main gate of the hospital. He did not name any accused as participant in the complaint. According to him, at about 1.15 p.m., at the main gate of CMC Hospital, 7 or 8 persons came Thadi and Kambu and chased the fourth deceased Liyagath Ali and three persons attacked him.

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Thereafter, he fell down unconscious. Thereupon, he was taken in a stretcher to the Casualty Ward. Within 5 minutes, he died. According to P.W.4, at about 4.15 p.m., the Inspector of Police and Head Constable of B4 Police Station came to the scene and obtained a complaint (Ex.P45) from him. He did not mention anything about the other witnesses in which the other deceased died. He did not identify any of the accused in the Court. As such, his evidence is not useful to the prosecution case.

34. P.W.8 Syed Mohamed is yet another eye witness. According to him, he saw the occurrence that took place inside the hospital on 30.11.1997 in which, the deceased 1 to 3 were done to death. Admittedly, till he was examined on 8.11.1998, he did not inform about the details of the occurrence in which the deceased died either to police or to any other person.

35. As a matter of fact, in the police firing, his one of the relatives died. He is also one of the witnesses who accompanied the injured witnesses to the hospital in the van. He admits that he knew that the Out Post Police Station is inside the hospital and even then, he did not care to inform the police about the occurrence. According to him, P.W.3, who was the van driver, took the van and left the hospital. As indicated above, P.W.3 would state that he stopped the van at the hospital complex itself and went away. So, this makes the presence of both P.Ws.8 and 3 at the spot is doubtful.

36. P.W.15 Hameed is also another witness. According to him, he accompanied the injured witnesses who sustained injuries in police firing from the Aslam Hospital in the van to CMC Hospital in Coimbatore. He stated that he along with P.W.16 Rafique was sitting in the van. At that time, the accused persons who were sitting in front of the Casualty Ward came and attacked the first deceased Harris and the second deceased Habib Rahman who were taken in the stretchers.

37. He further stated that the third deceased Hariff was attacked by the accused persons at the entrance. Even though he made arrangements for taking the injured persons to give treatment in the CMC Hospital, he did not go to the police station and report about the matter. On the other hand, in respect of the death of Hariff, the third deceased, the complaint was given by one David which was registered in Crime No.1893/97. The said David has not been examined.

38. Admittedly, P.W.15 was examined only after one year by the CB CID police. He also admitted in the cross-examination that before the occurrence took place, there was a heavy crowd inside the hospital and police people were also standing in uniform. According to him, he was in the hospital for about 1 ¾ hours. Though he stated in the evidence that some of the persons were murdered, he was not able to say as to who were murdered and who murdered them. Therefore, his evidence would not be of any help to the case of the prosecution, especially when he

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admitted that there was a heavy police bundobust and heavy crowd was inside the hospital and even then, he did not choose to inform them in relation to the occurrence.

37. The next eye witness is P.W.16 Rafique. He is one of the witnesses who accompanied the injured persons in the van to the hospital. According to him, nearly 10 accused came to the scene and pushed the deceased 1 and 2 from the stretchers and attacked them with wooden logs. The case of the prosecution is that the second deceased was burnt to death. He did not whisper anything about the act of the accused who is said to have poured petrol on the second deceased and caused his death. According to him, the second deceased Habib Rahman was left at the Vincent Road itself. On the other hand, now the prosecution case is that the second deceased Habib Rahman also accompanied the other witnesses in the van to the hospital where he was done to death. He also admitted that he saw the occurrence along with P.W.15 Hameed. As indicated above, both P.Ws.15 and 16 have not cared to inform any person including the police. Even though the occurrence had taken place on 30.11.1997, P.W.16 chose to give a statement implicating some accused only on 4.8.1998, nearly after 8 months.

38. The main point which is to be taken note of is as to why these witnesses, who have given details about the overt acts attributed to each of the accused in relation to the death of the deceased 1 to 4, have not given any information about the occurrence in which their friends and relatives were done to death to any one including the police, immediately after the occurrence.

39. As indicated above, in regard to the murder of four persons, four separate complaints were received by the police from four persons who are not connected with the deceased. In respect of the murder of Harris,the first deceased, one Palanisamy has given a complaint in Crime No.1891/97. The police has not given any explanation as to why Palanisamy was not examined. A complaint which was received from P.W.5 Police Constable in respect of the death of Habib Rahman, the second deceased, was registered in Crime No.1892/97. P.W.5 in the said complaint did not mention anything about the identity of the accused nor the presence of the other eye witnesses. Similarly, in respect of the death of Hariff, the third deceased, even though P.W.1, the brother of the third deceased was present in the place of occurrence, he did not choose to give any complaint to the police. On the other hand, one David who is not connected with the Muslim Association or the deceased, has given the complaint which was registered in crime No.1893/97. The said David also was not examined. No explanation has been given for his non-examination. Similarly, in respect of the death of Liyagath Ali, the fourth deceased, a complaint was received from P.W.4 Mahendran. He is also not connected with any Muslim Organisation or the deceased. In fact, the authors of all the four F.I.Rs. are independent, who are neither connected with the prosecution party nor the accused party. So, the non-

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examination of these material witnesses would go to the root of the matter.

40. The important eye witnesses in this case are all Muslims, who belong to the Muslim Association, who are interested in the case of prosecution as well as aggrieved against the Hindus. As indicated above, in all the F.I.Rs, no particulars of the witnesses and the accused have been given. Similarly, it is the case of the prosecution that the occurrence had taken place in the presence of the police officers, who are in the bundobust duty and the staff members of the hospital. The prosecution has not taken steps to examine some of those independent witnesses to show as to how the occurrence had started and how the occurrence had taken place.

41. The main important material witnesses would be one Abdul Rahman and Nazir who were taken in the stretchers, who sustained injuries during the police firing. They were not examined. None of the eye witnesses speaks about the presence of P.W.5, the Out Post Police Constable, who has given the complaint in respect of the death of the second deceased.

42. Even the Public Prosecutor was unable to say as to how these witnesses were traced to fix them as eye witnesses by P.W.36, the Inspector of Police, CB CID who took up investigation long after the occurrence and as to what was the reason for not having given any statement immediately after the occurrence was over to the police by these witnesses, even though they happened to meet the police officers on several occasions with reference to the enquiry for compensation, etc.

43. It is settled law that the unexplained delay in recording the statements of the eye witnesses, the non-examination of the material witnesses and unusual behaviour and artificial conduct of the eye witnesses would create a doubt about the genuineness of the case of prosecution, as laid down in the decisions in 2004 (11) SUPREME COURT CASES 253 (HARJINDER SINGH v. STATE OF PUNJAB), 2003 (10) SUPREME COURT CASES 670 (MARUTI RAMA NAIK v. STATE OF MAHARASHTRA), 2003 (11) SUPREME COURT CASES 203 (STATE OF PUNJAB v. HARBANS SINGH), 2002 (2) SUPREME COURT CASES 737 (DEEPAK KUMAR v. RAVI VIRMANI) and 2003 CRI.L.J.2337 (SC) (STATE OF U.P. v. BHAGWANT).

44. Under those circumstances, this Court is constrained to come to the conclusion that the prosecution has miserably failed to place correct records before the Court to enable this Court to find out as to what was the genesis of the occurrence and as to how the occurrence had started, as to how the occurrence ended and as to what was the part played by each of the accused in the commission of the crimes in question. Ultimately, this Court is of the view that all the accused are entitled to the benefit of doubt.

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45. In the result, the appeals are allowed setting aside the conviction and sentence imposed upon the appellants/A1,A2,A3,A5 to A10 and A11 and A14 by the trial Court. The bail bonds executed by the appellants shall stand cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1.The II Additional Sessions Judge,Coimbatore.
2.The Principal Sessions Judge, Coimbatore.
3.The Judicial Magistrate No.7, Coimbatore.
4. -do- The Chief Judicial Magistrate, Coimbatore.
5.The Superintendent, Central Prison, Coimbatore.
6.The Inspector of Police, B4 Race Course Police Station, Coimbatore.
7.The Public Prosecutor, High Court, Madras.
8.The District Collector, Coimbatore.
9. The Director General of Police, Chennai-4.
10. The Judicial Magistrate, Tanjore.
11. -do- through the Chief Judicial Magistrate, Tanjore.
+ 1 CC to The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. Su.Srinivasan, Advocate SR NO. 27043

Crl.A.Nos.893,1092 and
1093 of 2000

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